ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Docket No. NHTSA-2001-10773
Docket Management
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects
66 FR 51907, October 11, 2001

Advocates for Highway and Auto Safety (Advocates) appreciates the opportunity to provide comment on the National Highway Traffic Safety Administration (NHTSA) notice of proposed rulemaking regarding manufacturer reporting of foreign safety recalls and other safety campaigns. Section 3(a) of the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD), Pub. L. 106-414 (Nov. 1, 2000), requires that vehicle and equipment manufacturers shall notify NHTSA whenever either the manufacturer or a foreign government determines that a safety recall or other safety campaign must be conducted in a country other than the United States. 49 U.S.C. § 30166(l). Although the statutory mandate is self-executing and took effect as of November 1, 2000, the agency is required to prescribe the contents of the notification.

The TREAD Act was intended to greatly increase the scope of the safety information available to NHTSA in order to safeguard the American public. In fulfilling this intent, Congress sought to ensure that NHTSA would be notified of any and all formal safety recalls, and informal actions ("other safety campaigns"), that take place in foreign countries which might presage safety problems with "identical or substantially similar" vehicles or items of equipment sold in the United States. In order to give full effect to the legislative purpose, the scope of Section 3(a) of the TREAD Act must be given broad application. Advocates believes that the provisions of Section 3(a) should encompass the widest feasible spectrum of foreign recalls and safety campaigns.

In certain respects, NHTSA has adopted a similar view of the statutory requirements. For example, the agency states that the "term 'substantially similar' sweeps with a broad brush and is not to be defeated by persons bent on finding or inventing distinctions to evade reporting." 66 FR 51907, 51912 (Oct. 11, 2001). The agency also states "that the statute is designed to provide a broad range of relevant information to NHTSA not just information about vehicles that are 'substantially similar' in every way." *Id.* In this, and in other respects, Advocates agrees with the discussion of the issues presented in the notice and supports the proposal.

Advocates disagrees, however, with the agency's tentative conclusion limiting notification of foreign recalls and other safety campaigns by vehicle manufacturers to only those situations in which the defective component or system in a foreign vehicle is "substantially similar to the component or system the manufacturer used on a vehicle sold in the U.S." *Id.* Advocates is concerned that this approach unduly restricts reporting only to situations involving "substantially similar" defective components. Adoption of this formulation raises a number of issues.

First, the wording of Section 3(a) does not limit manufacturer notification to component or system defects. While formal recalls involve a specific defect for which a repair of a particular component or system has been identified, "other safety campaigns," including voluntary recalls, may not necessarily be based on a determination that a specific defect exists in a particular component or system. This is especially true during the initial phases of a safety investigation. Manufacturers at times respond to customer complaints and safety concerns even before a particular mechanical defect, if any, is conclusively identified. For example, despite disagreement over the cause of vehicle sudden acceleration, manufacturers voluntarily installed transmission interlocks that require the driver to depress the brake before moving the gear-shift lever out of the park setting. If vehicle manufacturers had taken this type of action to repair or change the design of vehicles in foreign countries it would clearly fall within the ambit of the "other safety campaign" language of Section 3(a). Yet, under NHTSA's proposal to require vehicle manufacturers to notify the agency only when there is a defective component or system, manufacturers might be able to decide not to report such actions since no defect in a particular component had been conclusively identified.

It is not relevant for the purposes of Section 3(a), and the goal of early notification of foreign safety problems, that NHTSA ultimately determined that driver behavior, and not a vehicle defect, was responsible for incidents of sudden acceleration. Section 3(a) is aimed at ensuring that NHTSA is aware of manufacturer safety campaigns undertaken abroad so that the agency has the knowledge and opportunity to address potential safety issues. Section 3(a) is supposed to be triggered by manufacturer actions to safety problems experienced abroad, not by the reason for the safety campaign (*e.g.*, defect or customer dissatisfaction) or by the final outcome or resolution of the problem.

Second, a rule limiting notification only to defects in "substantially similar" parts or systems would effectively rewrite Section 3(a) to narrow its scope and application. The agency would make defective equipment the linchpin for vehicle manufacturer notification, rendering the reference in Section 3(a) to foreign safety campaigns "on a motor vehicle" as mere surplusage. Vehicle manufacturers would be obligated to notify NHTSA of a recall or safety campaign only if the defective part is the same in both

foreign and domestic markets, regardless of whether the vehicles are substantially similar. Advocates believes that Congress intended Section 3(a) to cast a wider net and requires notification of foreign recalls and campaigns on "substantially similar" vehicles even if the particular defective part or system is not "substantially similar." NHTSA should be advised of a problem that has arisen overseas and that could potentially be manifested in the U.S. Thus, in the example posed in the notice of a defective seat belt buckle assembly used in a vehicle sold outside the U.S., the manufacturer should be required to notify NHTSA of any foreign safety campaign if it sells substantially similar vehicles in the U.S. even if that particular buckle assembly is not used in the domestic version of the vehicle.

NHTSA explains that it does not consider vehicles to be substantially similar if the foreign defective component is not "substantially similar" to a component in the model sold in the U.S. According to the agency notice, such "vehicles are not substantially similar in a *material respect that is relevant* to section 30166(l)." *Id.* Emphasis added. However, Section 3(a) does not include a "material respect" test for determining whether vehicles are substantially similar to one another. To claim that vehicles are either substantially similar or are not substantially similar based on whether a single part or system is identical rewrites the statute and makes it revolve entirely around defective equipment. Advocates is convinced that Section 3(a) intended NHTSA to be notified when either a defective part in a foreign vehicle which is also used in a U.S. model, is the subject of a recall or safety campaign, or when a foreign vehicle model that is otherwise substantially similar to domestic model is subject to such action even though the same defective part is not found in both. Congress wanted NHTSA to have this information so the agency would be aware of, and could evaluate, potential safety problems and make its own decision about the safety of the vehicle sold in the U.S. This is particularly true where the manufacturer has taken some specific action before a specific defect has been determined.

Moreover, the sharing of this information has no legal consequences for the manufacturer. As NHTSA points out in the notice,

> the report of a foreign recall or campaign is not equivalent to an admission that a safety defect exists in the U.S. or that a recall is needed in this country. Rather, the purpose is to allow NHTSA to consider it, often along with other information, in deciding whether to open a defect investigation. The manufacturer could indicate in a communication to the agency the reasons why it believes that the problem covered by the foreign campaign is unlikely to occur in the United States.

Id. at 51913.

In conclusion, Advocates believes that NHTSA should require notification by vehicle manufacturers of foreign recalls and other safety campaigns where the foreign and domestic versions of a vehicle can reasonably be said to be substantially similar regardless of whether any specific component or system is substantially similarity.

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